IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11225 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHAPAR JUNA VAS GRAM PANCHAYAT

Versus

DIPAK AUTOMOBILES

Appearance:

1. Special Civil Application No. 11225 of 1993

MR TUSHAR MEHTA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 29/03/2004

ORAL JUDGEMENT

Madhapar Juna Vas Gram Panchayat, through its Secretary, has filed the present Special Civil Application under Article 226/227 of the Constitution of India for an appropriate writ or order restraining the learned Civil Judge (SD) at Bhuj from entertaining Special Civil Suit No. 204/1993 filed by respondent

herein and passing any order therein on the ground inter alia that in view statutory remedy available under the provisions of Gujarat Panchayats Act the suit could not have been filed by the respondent and the trialcourt should not have entertained the same and pass the order thereon. The question which was challenged in the said suit with regard to imposition of octroi. That in the said Suit, Application Exh.5 was filed for interim relief and from the record it seems that the learned 2nd Joint Civil Judge, Bhuj, by his order dated 30.9.1993 has allowed the application below Exhibit 5.

2. This Court has admitted the aforesaid Special Civil Application on 25.111.1993 and also granted stay against further proceedings of Special Civil Suit No. 204 of 1993 pending in the file of learned Civil Judge (SD), Bhuj (Kucth).

3. From the record, it also emerges that the petitioner had preferred Appeal From Order No. 437 of 1993 challenging the order dated 30th September 1993 passed below Exh. 5 filed in Special Civil Suit No. 204 of 1993 in which Civil Application No. 4341 of 1993 was also filed, which came up for hearing before learned Single Judge of this Court, and this Court (Coram: K.R. Vyas, J.) passed the following order on 13th October 1993;

> "By way of interim order, the opponent is directed to pay the amount of octroi fixed by the applicant-Panchayat. The said payment shall be made without prejudice to the rights and contentions and subject to the result of the suti pending between the parties. In case the opponent succeeds in the suit the Panchayat shall refund the amount collected by way of octroi with interest thereon at the rate of 12 per cent per annum."

4. Today, when the present Special Civil Application is called out for final hearing, learned advocate, Mr. Tushar Mehta has pointed out that now the octroi is already abolished in the State of Gujarat and therefore as such the present Special Civil Application would not survive. However, in view of the fact that respondent was directed to deposit the amount pursuant to the order passed in aforesaid Civil Application in Appeal From Order which is subject to the result of the suit, the respondent might proceed with the suit and therefore Mr.

Mehta has requested that appropriate order may be passed reserving liberty to the petitioner to request the trial court for deciding the question which is raised in this Special Civil Application with regard to jurisdiction by way of preliminary issue.

5. In view of the aforesaid facts and circumstances of the case, more particularly when the octroi is already abolished, it will be in fitness of things to dispose of the present Special Civil Application by directing that as and when the respondent desires to proceed further with Special Civil Suit No.204 of 1993 pending in the file of learned Civil Judge (SD), Bhuj (Kutch), then it will be open for the petitioner to request the trial Court for deciding the question which is raised in the present Special Civil Application with regard to jurisdiction as a preliminary issue and on such application being made by the petitioner, the trial court is directed to decide the question with regard to jurisdiction which is raised in the present Special Civil Application by way of preliminary issue.

6. With this observation, the present Special Civil Application is disposed of accordingly. Rule is discharged. Ad-interim relief stands vacated. No order as to costs.

rmr. [M.R. Shah, J.]